Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline	)	CC Docket No. 98-147
Services Offering	)	
Advanced Telecommunications	)	
Capability	)	

OPPOSITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES TO THE PETITIONS FOR RECONSIDERATION FILED BY SBC COMMUNICATIONS INC., SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, NEVADA BELL AND BELL ATLANTIC

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Public Notice dated September 18, 1998, (Report No. 2297) hereby files an opposition to the petitions for reconsideration and clarification of the Memorandum Opinion and Order in the above-referenced docket (the "Advanced Wireline Services Order") filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (joint petition) and by Bell Atlantic.

Two issues are raised by the petitions. First, the petitioners argue that the Commission erred in its determination that incumbent local exchange carriers ("ILECs") must "condition" loops at the request of new entrants to enable the new entrants

to provide digital signals for high speed broadband services over those loops. Second, petitioners argue that the Commission erred in finding that Section 706 of the Telecommunications Act of 1996 provides no independent grant of forbearance authority to the Commission. Neither of these arguments has merit and the Commission should deny the petitions.

I. THE ILECS ATTEMPT TO REVERSE THE COMMISSION'S RULING RELATING TO THE PROVISION OF LOOPS IS UNTIMELY AND UNFOUNDED.

In the Advanced Wireline Services Order the Commission granted a request by ALTS for a declaratory ruling that ILECs are required, pursuant to Section 251(c)(3) of the Act, to provide unbundled loops capable of transmitting high speed digital signals.[1] ALTS had filed its petition for declaratory ruling because it believed that ILECs were required to provide such loops pursuant to a previous Commission Order and the members of ALTS were having difficulty obtaining such loops from some ILECs.[2]

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[1] Petition of the Association for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-78 (filed May 27, 1998).

[2] As noted in the ALTS petition, "ILECs have uniformly refused to disable . . . load coils and bridge taps in response to CLEC requests." ALTS Petition at 17.

The Commission based its ruling in the Advanced Wireline Services Order on its previous Local Competition Order,[3] which found that the local loop is a network element that ILECs must unbundle and offer to competitive carriers pursuant to Section 251(c) of the Telecommunications Act of 1996.[4]

In the Local Competition Order, the Commission had stated that the local loop must include "two wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL and DS1-level signal" and that ILECs must take "affirmative steps to condition existing loop facilities to enable requesting carriers" to provide those services even if those services are not currently being provided over the particular loop. Thus, the ruling contained in the Advanced Wireline Services Order is simply a reiteration of the Commission's decision two years ago in the Local Competition Order. As such, the instant petitions are untimely petitions for reconsideration of the Local Competition Order.[5]

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[3] 11 FCC Rcd 15499 (1996), aff'd in part, rev'd in part, Iowa Utilities Bd. v. FCC, 120 F.2d 753 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998).

[4] 47 U.S.C. § 251(c).

[5] In addition, if the Petitioners believed there is an inconsistency between the Commission's UNE rules and the superior quality rule that was overturned, they should have made that claim in petitions for rehearing to the Eighth Circuit. However, their petitions for rehearing made no such claim.

The Petitioners claim, however, that the Commission's requirement that ILECs condition loops to enable the provision of the advanced data services even when such services are not currently being provided by the ILEC is in conflict with the Eighth Circuit's holding in Iowa Utilities Board v. FCC, 120 F.2d 753 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998). In that case the Eighth Circuit struck down the Commission's rule 51.311(c), which required ILECs to provide access to unbundled network elements that are "superior in quality" to that which the ILEC provides itself upon the request of another carrier. The Eighth Circuit had found that nothing in Section 251(c)(3) requires the ILEC to provide unbundled network elements at a quality "superior" to that which it would provide itself and that unbundled access is required to the LEC's existing networks "not to a yet unbuilt superior one." 120 F.2d at 813 (emphasis in original).

There is no conflict between the Eighth Circuit's holding and the Commission's most recent pronouncement. Leaving aside for the moment the question of whether the provision of a "conditioned" unbundled loop is the provision of an element "superior" to what it provides itself, when the Eighth Circuit's order is read in context, it is clear that the Court was concerned that the ILECs not be required to take substantial

measures to provide improved or superior quality elements that it would not otherwise provide. In fact the Court noted that:

> Although we strike down the Commission's rules requiring incumbent LECs to alter substantially their networks in order to provide superior quality . . . unbundled access, we endorse the Commission's statement that 'the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.[6]

In seeking reversal of the Commission's rules relating to superior quality the ILECs themselves did "not dispute that LECs may have to make minor modifications to their networks where directly necessary to accomplish the interconnection and access mandated by the Act" (Reply Brief of Petitioners Regional Bell Companies and GTE at 40, Iowa Utilities Board v. FCC, filed January 6, 1997), but objected to what they saw as an FCC requirement that "forced ILECs to undertake extensive upgrades to their networks simply to satisfy [new] entrant requests." (Id. at 41) (emphasis added).

First, the Commission's rule requiring the ILECs to offer unbundled loops was not vacated by the Eighth Circuit's opinion, nor did the Eighth Circuit even discuss the Commission's conclusion in its Local Competition Order that requiring ILECs to provide local loops means that they must provide "two wire and

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[6] 120 F.2d at 813 n.33.

four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL and DS1-level signals."

Second, the Eighth Circuit's refusal to set aside this rule was plainly sound inasmuch as it clearly does not require ILECs to undertake "extensive upgrades" of their facilities, or any upgrade at all, for that matter.[7] Rather than adding or supplementing loop facilities, "conditioning" is simply the process of identifying those existing loops which have loading coils or bridge taps or the like and, if necessary, removing those pieces of equipment. There generally would be no augmentation involved and it must be remembered that the Commission's requirement is limited by technical feasibility. Furthermore, the ILECs have already done this work for themselves in connection with their provisioning of hundreds of thousands of ISDN lines (only details of the ISDN conditioning process, such as loop lengths, differ from xDSL), and the ILECs' rush to provide xDSL services themselves tends to indicate that any technical difficulties must not be insurmountable or that widespread. What is being required by the Commission for the

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[7] Nor does it appear that requiring ILECs to condition loops for the provision of broadband services would, as alleged by Bell Atlantic, make the ILEC "a construction company for competitors." See Bell Atlantic Petition at 4.

CLECs is being done today by the ILECs for themselves on a regular basis. Thus, the Commission's requirement does not result in the ILECs being forced to do something for competitors that they do not do for themselves.

The ILECs have been on notice for two years that they will be required to provide loops capable of providing advanced services. If there are difficulties that the ILECs have in providing unbundled loops capable of providing xDSL services to CLECs that they don't have providing such loops to themselves it is a problem of their own making.

The ILECs contention that they should not have to provide loops "conditioned" to provide xDSL services, ISDN and other advanced services is just another variant on the argument that the Act applies only to the network as it existed on February 8, 1996, or to POTs-type services and that Congress somehow intended the interconnection and unbundled element requirements to only apply to the network as it existed at the passage of the Act. With all due respect, Congress was neither that myopic nor that shortsighted. It makes no sense to argue that Congress, which clearly wanted to increase consumer choice in telecommunications services would intend for the new entrants to be able to provide only the exact same services that the ILEC provides just because the new entrant happens to use the ILEC loop.

II. SECTION 706 DOES NOT OVERRIDE THE EXPLICIT RESTRAINTS ON THE COMMISSION'S FORBEARANCE AUTHORITY CONTAINED IN OTHER SECTIONS OF THE ACT.

Petitioners next argue that the Commission erred in finding that Section 706 contains no independent grant of forbearance authority to the Commission. Petitioners argue that by its terms Section 10(d)'s limitation on the Commission's forbearance authority is limited to forbearance authority pursuant to paragraph (a) of Section 10. The Petitioners argue therefore that the Section 10 limitation on forbearance authority in no way affects the Commission's exercise of forbearance authority under any other section.

Petitioners have forgotten basic rules of statutory construction, however. Petitioners read Section 706 as somehow negating or overriding Section 10(d). This violates the principles that the statute must be interpreted as a whole and that no provision should be read so as to render other provisions of the same statute meaningless.

Section 10 of the Telecommunications Act of 1996 requires that the Commission forbear from applying any regulation to a carrier when enforcement of the regulation is not necessary to ensure reasonable practices by the carrier or to protect

consumers and such forbearance is consistent with the public interest. Section 10 also includes a very detailed explanation of -- and limitation upon -- the Commission's forbearance authority:

> (d) LIMITATION.--Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251© or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

This explicit limitation of "forbearance" in the statutory provision creating the Commission's general forbearance authority clearly controls the same term when it is used in a more specific instance, as it is in section 706. The only way the Telecommunications Act can be interpreted as a whole is to make the meaning of "forbearance" in section 706 consistent with the more general definition and limitation of the same term as used in section 10. Boise Cascade Corp. v. EPA, 942 F.2d 1427, 1432 (9th Cir. 1991)(reviewing courts "must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." See also Mountain States Tele. and Tele. Co. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); United States v. Menasche, 348 U.S. 528, 538-39 (1955).

The petitioners argue, however, that the Commission's interpretation that it lacks the authority under Section 706 to forbear from applying the provisions of Section 251 and 271 of the Act until it determines that those requirements have been fully implemented reads the "under subsection (a)" language in Section 10 right out of the Act.

This makes absolutely no sense. The Petitioners reading of section 706 would mean, for example, that the Commission could alter the entire context of the statute - the carefully crafted carrot and stick of the section 271 checklist - simply by citing to section 706 despite the statute's express prohibition on checklist alteration.[8] The Petitioner's reading of Section 706 would turn the purpose and parameters of the Act on its head.[9] Congress intended, first and foremost, to encourage competition in the local markets and then, once markets are competitive, to deregulate the provision of services by ILECs.

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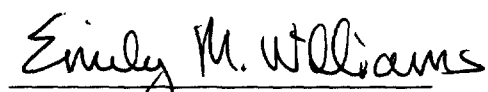
[8] See section 271(d)(4): "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."

[9] In addition, it is important to remember that Section 10 of the Act requires the Commission to forbear from applying regulation under certain circumstances, while Section 706 only permits forbearance as one tool in accomplishing the goal of encouraging the timely deployment of advanced services. Thus, it would be particularly illogical for Section 706 to trump the limitations contained in Section 10(d).

CONCLUSION

For the foregoing reasons, ALTS respectfully requests that the Commission deny the Petitions for Reconsideration or Clarification filed by SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and by Bell Atlantic.

Respectfully Submitted,



Emily M. Williams
Association for Local
Telecommunications Services
888 17th St., N.W. Suite 900
Washington, D.C. 20036
(202) 969-2595

October 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 1998, copies of the foregoing Opposition of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, to the parties listed below.

Emily M. Williams

Emily M. Williams

James D. Ellis
Robert M Lynch
Durward D. Dupre
One Bell Center Rm 3528
St. Louis, MO 63101

Mark L. Evans
Sean A. Lev
Kellogg, Huber, Hansen
Todd and Evans
1301 K Street, NW
Washington, D.C. 20005

Lawrence W. Katz
1320 Noth Court House Road
8th Floor
Arlington, Virginia 22201

William T. Lake
John H. Harwood II
Wilmer Cutler & Pickering
2445 M Street, NW
Washington D.C. 20037

Joel Bernstein
Halprin, Temple, Goodman & Sugrue
1100 New York Ave., NW, Suite 650 East
Washington, DC 20005

Thomas Gann
Sun Microsystems
1300 I Street, NW, Suite 420 East
Washington, DC 20005

Russell Staiger
BMDA
400 East Broadway Avenue
Bismarck, ND 58501

Cherie Kiser
Michael Bressman
Mintz, Levin
701 Pennsylvania Ave., Suite 900
Washington, DC 20004

John T. Lenahan
Ameritech Corporation
2000 West Ameritech Center Drive
Room 4H84
Hoffman Estates, IL 60196

Robert McKenna
Jeffry Brueggeman
US West, Inc.
1020 19th Street, NW
Washington, DC 20036

Lawrence Malone
General Counsel
New York Dept. of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

M. Robert Sutherland
BellSouth Corporation
1155 Peachtree Street, NE
Suite 1700
Atlanta, GA 30309-3610

James Ellis
SBC Communications
One Bell Plaza
Room 3703
Dallas, TX 75202

Catherine Sloan
Counsel for WorldCom, Inc.
1120 Connecticut Avenue, NW,
Suite 400
Washington, DC 20036

Ronald Plesser
Mark O'Connor
Stuart Ingis
Piper & Marbury
1200 19th Street, NW, 7th Floor
Washington, DC 20036

Kecia Boney
Lisa Smith
MCI Telecommunications Corp.
1801 Pennsylvania Ave., NW
Washington, DC 20006

William Rooney, Jr.
Counsel for Global NAPs, Inc.
10 Winthrop Square
Boston, MA 02110

Maureen Lewis
Alliance for Public Technology
901 15th Street, NW, Suite 230
Washington, DC 20037-7146

J. Jeffrey Oxley
Assistant Attorney General
Minnesota Dept. of Public Service
1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Cheryl Parrino
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

G. Richard Klein
Indiana Utility Regulatory Commission
302 W. Washington, Suite E-306
Indianapolis, IN 46204

Leon KestenBaum
Jay Keithley,
H. Richard Junke
Sprint Corporation
1850 M Street, NW
Washington, DC 20036

Catherine G. O'Sullivan
U.S. Dept. of Justice
Patrick Henry Bldg.
601 D Street, NW., Room 10536
Washington, DC 20530

J. Manning Lee
Teresa Marrero
TCG
2 Teleport Drive
Staten Island, NY 10311

Randall Lowe
J. Todd Metcalf
Piper & Marbury
1200 19th Street, NW
Washington, DC 20036

Keith Townsend
USTA
1401 H Street, NW, Suite 600
Washington, DC 20005

Blossom Peretz
NJ Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07101

A. Daniel Sheinman
Laura Ipsen
Cisco Systems
170 West Tasman Drive
San Jose, CA 95134-1706

Russell Blau
Swidler & Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Carol Weinhaus
Telecommunications Industries Analysis Project
Public Utility Research Center
Meeting House Offices
121 Mount Vernon Street
Boston, MA 02108

John Dodge
Cole, Raywid & Braveman
1919 Pennsylvania Ave., NW 2nd Floor
Washington, DC 20006-3458

Christopher Savage
Karlyn Stanley
Cole, Raywid & Braveman
1919 Pennsylvania Ave., NW 2nd Floor
Washington, DC 20006-3458

Mitchell Lazarus
Fletcher, Heald
1300 North 17th Street
Arlington, VA 22209

Aliceann Wolhbruck
National Assoc. of Development Organizations
444 North Capitol Street, NW., Suite 630
Washington, DC 20001

Frank Simone
AT&T
1120 20th Street, NW., Suite 1200
Washington, DC 20036

Janice Myles
Common Carrier Bureau - FCC
1919 M Street, NW
Washington, D.C. 20554

ITS Inc
1231 20th StN.W.
Washington, D.C. 20036